

82-00085

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Mr. Earl C. Morgan
District Attorney
Tenth Judicial Circuit
610 Courthouse
Birmingham, AL 35263

Uniform Controlled Substance
Act - Drugs - Evidence

Code of Alabama 1975, §20-2-93, leaves the procedure for the destruction of evidence to the court's judgment.

Dear Mr. Morgan:

You have requested the opinion of this office in regard to the validity of a tentative plan concerning the destruction of excess evidence. In particular, your question is whether under court order it is proper to dispose of excess evidence seized under the Uniform Controlled Substance Act before trial.

According to §20-2-93(4)(d) of the Alabama Code "property taken or detained under this section shall not be subject to replevin but is deemed to be in the custody of the state, county or municipal law enforcement agency subject only to the orders and judgment of the court having jurisdiction over the forfeiture proceedings. When property is seized under this chapter, the state, county or municipal law enforcement agency may:

1. Place the property under seal;
2. Remove the property to a place designated by it;
or
3. Require the state, county or municipal law

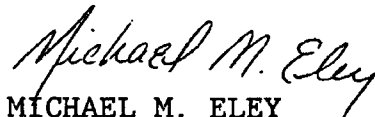
enforcement agency to take custody of the property and remove it to an appropriate location for disposition in accordance with law.

This section of the code indicates that it is up to the court's discretion as to the particular procedure in the maintenance of evidence. Therefore, it is the opinion of this office that the proposed plan is valid. Although not required by statute, however, a pre-trial hearing with the defense present might protect against later claims that the destroyed evidence could somehow have aided the defense.

Yours very truly,

CHARLES A. GRADDICK
ATTORNEY GENERAL

BY -

A handwritten signature in cursive script that reads "Michael M. Eley".

MICHAEL M. ELEY
ASSISTANT ATTORNEY GENERAL

MME:sbh